

## Item 4.

### Local Planning Panel - Delegations

**File No: X079022**

#### Summary

This report recommends that the Local Planning Panel reconfirm delegations of its consent authority functions to Council officers that it has previously made in relation to legal proceedings and the determination of a number of application types.

In addition this report recommends that the Local Planning Panel delegate its consent authority functions to Council officers in relation to some additional applications for small scale/low impact development associated with additions or works that do not significantly impact on the height, bulk or setbacks of an existing building or structure and some section 4.56 modification applications.

#### Recommendation

It is resolved that:

- (A) in accordance with the requirements of the Environmental Planning and Assessment Act 1979, the Local Planning Panel delegate its functions as a consent authority in relation to legal proceedings arising from a decision of the Local Planning Panel (or a decision that would have ordinarily been required to be dealt with by the Local Planning Panel) to the positions of Manager Planning Assessments, Executive Manager Planning and Development, and Director City Planning, Development and Transport;
- (B) in accordance with the requirements of the Environmental Planning and Assessment Act 1979, the Local Planning Panel delegates its functions as a consent authority in relation to development for which Council is the applicant or landowner and the application proposes:
  - (i) internal alterations and additions to a building that is a heritage item; or
  - (ii) temporary installation of public art; or
  - (iii) a temporary event;

to the positions of Area Planning Manager and Manager Planning Assessments;

(C) in accordance with the requirements of the Environmental Planning and Assessment Act 1979, the Local Planning Panel delegates its functions as a consent authority, where there have been no more than one objection received, in relation to development for which Council is the applicant or land owner and the application proposes:

- (i) outdoor seating;
- (ii) works within the public domain such as the placement of security bollards, upgrade of the public domain, construction of driveways, landscaping and the like;
- (iii) the placement or relocation of kiosks and other minor structures within the public domain;
- (iv) the installation of shade structures and play equipment;
- (v) the installation of solar panels; (vi) small scale alterations and additions to existing facilities; and
- (vi) other small-scale development with a development cost of no more than \$100,000;

to the positions of Manager Planning Assessments, Executive Manager Planning and Development, and Director City Planning, Development and Transport;

(D) in accordance with the requirements of the Environmental Planning and Assessment Act 1979, the Local Planning Panel delegates its functions as a consent authority regarding development applications that fall into the following categories:

- (i) development applications for the removal of existing pedestrian bridges/overpasses in King Street, Pitt Street and Castlereagh Street and making good of adjacent buildings, where the sole reason for reporting the application to the Local Planning Panel for determination is that Council is the applicant and/or landowner; and
- (ii) development applications for a boarding house development where the sole reason for reporting the application to the Local Planning Panel for determination is the proposal's non-compliance with the motorcycle parking standard contained in Clause 30 Standards for Boarding Houses (1) (h) of the State Environmental Planning Policy (Affordable Rental Housing) 2009;

to the positions of Manager Planning Assessments, Executive Manager Planning and Development, and Director City Planning, Development and Transport;

- (E) in accordance with the requirements of the Environmental Planning and Assessment Act 1979, the Local Planning Panel delegates its functions as a consent authority regarding development applications that fall into the following category:
- (i) variations over 10% associated with additions or works that do not significantly impact on the height, bulk or setbacks of an existing building or structure, where the existing building or structure already exceeds the relevant development standard;

to the positions of Manager Planning Assessments, Executive Manager Planning and Development, and Director City Planning, Development and Transport; and

- (F) in accordance with the requirements of the Environmental Planning and Assessment Act 1979, the Local Planning Panel delegates its functions as a consent authority regarding section 4.56 applications for modification of a development consent issued by the Land and Environment Court, in respect of an application determined by the Local Planning Panel (or an application that would have ordinarily been required to be dealt with by the Local Planning Panel) that fall into the following categories:
- (i) applications under section 4.56 of the Environmental Planning and Assessment Act 1979 for modification of a development which meet the criteria for development applications set out in the Schedules to the Local Planning Panels Direction - Development Applications and Applications to Modify Development Consents dated 30 June 2020 relating to conflict of interest, contentious development or departure from development standards;

to the positions of Manager Planning Assessments, Executive Manager Planning and Development, and Director City Planning, Development and Transport.

## **Attachments**

- Attachment A.** Local Planning Panels Direction - Development Applications - 23 February 2018
- Attachment B.** Local Planning Panels Direction - Development Applications and Applications to Modify Development Consents - 30 June 2020
- Attachment C.** Resolution of and Report to the Local Planning Panel - 23 May 2018
- Attachment D.** Resolution of and Report to the Local Planning Panel - 15 April 2020
- Attachment E.** Resolution of and Report to the Local Planning Panel - 19 May 2021
- Attachment F.** Assumed Concurrence Letter - 1 September 2020

## Background

### Local Planning Panels Directions

1. The City of Sydney Local Planning Panel was established by resolution of Council on 19 February 2018.
2. The then Minister for Planning issued a Direction under section 9.1 of the Environmental Planning and Assessment Act 1979 (the Act) on 23 February 2018 prescribing the development applications that are to be determined by Local Planning Panels on behalf of Councils in the Greater Sydney Region and Wollongong. The referral criteria for the City of Sydney were identified in Schedule 3 of the Direction.
3. A copy of the Direction is contained in Attachment A.
4. This Direction related to development applications and contained the following note with regard to applications for the modification of development consents:

*Note: Councils can make arrangements for the determination of applications for the modification of development consents by either the local planning panel or Council staff.*
5. On 23 May 2018 the Local Planning Panel resolved, amongst other matters referred to below, to delegate its consent authority functions in relation to modification applications made under sections 4.55 and 4.56 to Council officers.
6. The delegation relating to modification applications has been somewhat superseded by the Local Planning Panels Direction - Development Applications and Applications to Modify Development Consents dated 30 June 2020, and which took effect on 1 August 2020.
7. A copy of this Direction is contained in Attachment B.
8. Other than capturing some section 4.55 (2) modification applications, the criteria for referring development applications to the Local Planning Panel remained unchanged.
9. The updated Direction identifies that certain section 4.55 (2) modification applications are to be reported to the Local Planning Panel for determination but contains the following note with regard to modification applications;

*Note: Councils in areas identified in the Table to this direction are generally precluded from exercising consent authority functions by operation of Section 4.8(2) of the Act. This means councils should make arrangements for the determination of all other modification applications under section 4.55 (2), as well as sections 4.55 (1) and (1A) of the act, by council staff. Councils should also make arrangements for the determination of modification applications under section 4.56 of the Act by either the local planning panel or council staff.*

**Delegations by the Local Planning Panel**

10. Since its inception the Local Planning Panel have delegated a number of matters to Council officers. These matters are detailed in:
  - Attachment C - Resolution of Local Planning Panel 23 May 2018 - Item 11
  - Attachment D - Resolution of Local Planning Panel 15 April 2020 - Item 5
  - Attachment E - Resolution of Local Planning Panel 19 May 2021 - Item 6
11. At its meeting of 23 May 2018, the Local Planning Panel delegated the following matters to Council officers:
  - (a) its functions as a consent authority in relation to legal proceedings arising from a decision of the Local Planning Panel (or a decision that would have ordinarily been required to be dealt with by the Local Planning Panel)
  - (b) its functions as a consent authority in relation to modification applications under sections 4.55 and 4.56 (refer above - superseded by the Local Planning Panels Direction - Development Applications and Applications to Modify Development Consents dated 30 June 2020)
  - (c) development for which Council is the applicant or landowner and the application proposes:
  - (d) internal alterations and additions to a building that is a heritage item; or
  - (e) temporary installation of public art; or
  - (f) a temporary event.
12. At its meeting of 15 April 2020, the Local Planning Panel delegated the following matters, being applications for which Council is the applicant or landowner, and where there has been no more than one objection received, to Council officers:
  - (a) outdoor seating;
  - (b) works within the public domain such as the placement of security bollards, upgrade of the public domain, construction of driveways, landscaping and the like;
  - (c) the placement or relocation of kiosks and other minor structures within the public domain;
  - (d) the installation of shade structures and play equipment;
  - (e) the installation of solar panels;
  - (f) small scale alterations and additions to existing facilities;
  - (g) other small-scale development with a development cost of no more than \$100,000;

13. At its meeting of 19 May 2021, the Local Planning Panel delegated the following matters to Council officers:
  - (a) development applications for the removal of existing pedestrian bridges/overpasses in King Street, Pitt Street and Castlereagh Street and making good of adjacent buildings, where the sole reason for reporting the application to the Local Planning Panel for determination is that Council is the applicant and/or landowner; and
  - (b) development applications for a boarding house development where the sole reason for reporting the application to the Local Planning Panel for determination is the proposals non-compliance with the motorcycle parking standard contained in Clause 30 Standards for Boarding Houses (1) (h) of the State Environmental Planning Policy (Affordable Rental Housing) 2009.
14. The above delegations generally cover small scale/non contentious development. It is recommended that, with the exception of the delegation of 23 May 2018 relating to applications made under sections 4.55 or S4.56 for the modification of consent, these delegations be reconfirmed by the Local Planning Panel.

### **Departure from Development Standards**

15. In addition to the above delegations the Secretary of the Department of Planning, Industry and Environment has provided an assumed concurrence for certain development applications the subject of a Clause 4.6 variation request relating to non-compliance with a development standard. Such concurrence has been granted on a rolling 12-month basis.
16. The most recent concurrence lapsed on 1 September 2021. A copy of the letter granting assumed concurrence is provided in Attachment F.
17. The consequence of the concurrence was to effectively amend Section 3 Departure from development standards of Schedule 3 of the Local Planning Panels Direction.
18. The assumed concurrence provided that Council is exempted from reporting variations over 10% to the Local Planning Panel for determinations associated with additions or works that do not significantly impact on the height, bulk or setbacks of an existing building or structure, where the existing building or structure already exceeds the relevant development standard.
19. The above assumed concurrence has previously been applied to a small number of generally small scale/uncontentious applications.
20. In lieu of obtaining a further assumed concurrence it is recommended that the Local Planning Panel delegate the determination of applications subject to variations over 10% associated with additions or works that do not significantly impact on the height, bulk or setbacks of an existing building or structure, where the existing building or structure already exceeds the relevant development standard, to Council officers.

## Modification Applications

21. The Local Planning Panels Direction - Development Applications and Applications to Modify Development Consents dated 30 June 2020 identifies which section 4.55 modification applications are to be reported to the Local Planning Panel for determination.
22. In this regard:
- (a) Section 4.55 (1) applications, being modifications to correct a minor error, misdescription or miscalculation, are not reported to the Local Planning Panel for determination and are to be determined by Council officers;
  - (b) Section 4.55 (1A) applications, being modifications involving minimal environmental impact, not reported to the Local Planning Panel for determination and are to be determined by Council officers; and
  - (c) Section 4.55 (2) applications that meet the following criteria are to be determined by the Local Planning Panel;
    - applications that propose amendments to a condition of development consent recommended in the Council assessment report but which was amended by the panel; or
    - applications that propose amendments to a condition of development consent that was not included in the Council assessment report but which was added by the panel; or
    - applications that meet the criteria for development applications set out in the Schedules to the Direction relating to conflict of interest, contentious development or departure from development standards.
23. With regard to section 4.56 modification applications, being applications to modify a consent issued by the Land and Environment Court, the Direction contains the following note (as referred to above):
- Note: ..... Councils should also make arrangements for the determination of modification applications under section 4.56 of the Act by either the local planning panel or council staff.*
24. In this regard it is recommended, as with section 4.55 (2) applications, that section 4.56 applications to modify a consent issued by the Land and Environment Court, in respect of an application determined by the Local Planning Panel (or an application that would have ordinarily been required to be dealt with by the Local Planning Panel), that meet the criteria for development applications set out in the Schedules to the Direction relating to conflict of interest, contentious development or departure from development standards be reported to the Local Planning Panel for determination.

## Relevant Legislation

25. Environmental Planning and Assessment Act 1979.

## Conclusion

26. The subject report proposes:

- (a) reconfirmation of the previous delegations from the Local Planning Panel;
- (b) adoption of the proposed delegation relating to certain small scale/uncontentious applications that depart from a development standard (previously subject of an assumed concurrence); and
- (c) adoption of the proposed delegation relating to section 4.56 applications to modify a consent issued by the Land and Environment Court;

which will provide clarity around the matters to be reported to the Local Planning Panel for determination whilst assisting the efficient assessment and determination of applications.

27. It should be noted that the matters to be delegated to Council officers for determination are considered to be smaller scale/uncontentious development and that the matters will only be delegated if they meet the requirements of the individual delegations and are not otherwise captured by the relevant provisions of the Local Planning Panels Direction - Development Applications and Applications to Modify Development Consents dated 30 June 2020 and which took effect on 1 August 2020.

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